

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation

Enforcement Case No. 10-7544

Petitioner

v

Sandra L. Hornacek (formerly Sandra L. Peck)  
System ID No. 0041396

And

Advantage Title & Escrow Agency, Inc.  
System ID No. 0024570

Respondents

CONSENT ORDER AND STIPULATION

Issued and entered  
on 10/25, 2010  
by Stephen R. Hilker  
Chief Deputy Commissioner

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, Sandra L. Hornacek (formerly Sandra L. Peck "Respondent Peck"), System ID No: 0041396, was a licensed resident producer in the state of Michigan with qualification and authorization to transact business, selling, soliciting and/or negotiating title insurance.
2. At all relevant times, Advantage Title & Escrow Agency, Inc. ("Respondent Advantage"), System ID No. 0024570, was a licensed resident producer, with qualification and authorization to transact business, selling, soliciting and/or negotiating title insurance.

3. Respondent Advantage's principal place of business was located at 203 S. Michigan Avenue, Hastings, MI 49508.
4. At all relevant times, Respondent Peck was the President of Advantage Title & Escrow Agency, Inc. The Office of Financial and Insurance Regulation ("OFIR") databases confirm that Respondent Peck was an Officer/Agent for Advantage Title & Escrow Agency, Inc.
5. As licensed insurance producers, Respondents knew or had reason to know that Section 1207 of the Michigan Insurance Code ("the Code"), MCL 500.1207, states in part:

(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers.

6. As licensed insurance producers, Respondents knew or had reason to know that Section 1238(1) of the Code, MCL 500.1238(1), states:

When applying for a license to act as an agent, solicitor, counselor, or adjuster, each applicant shall report his or her mailing address to the commissioner. An agent, solicitor, counselor, or adjuster shall notify the commissioner of any change in his or her mailing address within 30 days of such change. A fee of \$3.00 shall accompany each change of address to cover costs of recording such change. A fee collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state. The commissioner shall maintain the mailing address of each agent, solicitor, counselor, or adjuster on file.

7. As licensed insurance producers, Respondents knew or had reason to know that Section 1239(1) of the Code, MCL 500.1239(1), states in part:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner

shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:"

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(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

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(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

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(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

8. As licensed insurance producers, Respondents knew or had reason to know that Section 150(1) of the Code, MCL 500.150(1), states:

Any person who violates any provision of this act for which a specific penalty is not provided under any other provision of this act or of other laws applicable to the violation shall be afforded an opportunity for a hearing before the commissioner pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. If the commissioner finds that a violation has occurred, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

- (a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. . . . An order of the commissioner under this subdivision shall not require the payment of civil fines exceeding \$25,000.00. . . .
- (b) The suspension, limitation, or revocation of the person's license or certificate of authority.

9. Respondents have failed to uphold the standards as described below.

**II.**  
**ALLEGED VIOLATIONS**

1. On or about October 14, 2009, OFIR received a written Complaint from Kimberly S. O'Connor, Assistant Vice President and State Counsel for First American Title Insurance Company, alleging fiduciary misconduct on behalf of Respondents.
2. More specifically, First American Title Insurance Company ("First American") alleges that Respondents collected premiums, which Respondents collected on its behalf, but failed to remit.
3. First American was able to identify \$99,852.88 in collected premiums, which were not applied to insureds' policies nor remitted to them.
4. Respondents' failure to remit the collected premiums to First American occurred between January 2006 and December 2008.
5. On August 6, 2009, First American cancelled its contract with Respondents for collecting insurance premiums on its behalf, but failing to remit the premiums.

**COUNT I**  
**Engaging in Prohibited Conduct Contrary to MCL 500.1207**

6. Paragraphs 1 through 5 are incorporated by reference.
7. Respondents violated the Code when they demonstrated financial irresponsibility and incompetence by breaching their fiduciary duty when they did not timely remit customer premium payments to the insurer while conducting the business of insurance in this State, contrary to MCL 500.1207(1).
8. Respondents violated the Code when they demonstrated financial irresponsibility and incompetence by failing to use reasonable accounting methods to record funds received in their fiduciary capacity, including the receipt and distribution of all premiums due each of their insurers, while conducting the business of insurance in this State, contrary to MCL 500.1207(2).

**IV.**  
**STIPULATION**

Respondents have read and understand the Consent Order above. Respondents agree that the Chief Deputy Commissioner has jurisdiction and authority to issue this Consent Order pursuant to the Michigan Insurance Code. Respondents waive their right to a hearing in this matter if this Consent Order is issued. Respondents understand that the Consent Order and Stipulation will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this Consent Order. Respondents waive any objection to the Commissioner deciding this case following a hearing in the event the Consent Order is not approved.

Respondents admit to the Findings of Fact and Conclusions of Law set forth in the above Consent Order, and agrees to the entry of the Consent Order.

Dated: 10/16/10

Advantage Title & Escrow Agency  
Advantage Title & Escrow Agency

Dated: 10/16/10

Sandra L. Hornacek  
Sandra L. Hornacek (f/k/a Sandra L. Peck)

The Office of Financial and Insurance Regulation staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.

Dated: 10/25/10

Conrad L. Tatnall  
Conrad L. Tatnall  
Staff Attorney

**COUNT II**  
**Engaging in Prohibited Conduct Contrary to MCL 500.1239**

9. Paragraphs 1 through 8 are incorporated by reference.
10. Respondents violated the Insurance Code when they demonstrated financial irresponsibility and incompetence by improperly withholding, misappropriating, or converting money received and not rightfully earned while conducting the business of insurance in this State, contrary to MCL 500.1239(1)(d).
11. Respondents violated the Insurance Code when they demonstrated financial irresponsibility and incompetence by using fraudulent, coercive, or dishonest practices, by withholding money not rightfully earned while conducting the business of insurance in this State, contrary to MCL 500.1239(1)(h).


**III.**  
**ORDER**

Based upon the Findings of Fact and Conclusions of Law above and Respondents' stipulation, the Commissioner **ORDERS** that:

1. Respondents shall CEASE and DESIST from violating MCL 500.1207, MCL 500.1239(1)(d) & (1)(h).
2. Forthwith, Respondents shall update their addresses via the Producer Address Change Request (PACR) at the National Insurance Producer Registry (NIPR) website.
3. Forthwith, Respondents' insurance producer license and authority are hereby revoked. Respondents shall CEASE and DESIST from engaging in any activity requiring licensure under the Michigan Insurance Code.
4. Respondents agree that they will pay restitution pursuant to the terms of the agreement or order resulting from their currently filed bankruptcy cause of action.

**IT IS SO ORDERED**

Dated: 10/20/10

  
Stephen R. Hilker  
Chief Deputy Commissioner